**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO. 2401 OF 2006**

Mrs. Majorie Passanah & ors. ... Petitioners

V/s

Mrs. Mumtaz Iqbal Shaikh ... Respondent

Mr. Vishwanath Talkute for the petitioners.

Mr. P.S. Dani for the respondent.

**CORAM: P.V. KAKADE, J.**

**DATED: 10TH APRIL, 2006**

**P.C.**:

1. Heard learned counsel for both parties. Perused the record.

2. Rule. Rule made returnable forthwith.

3. The petitioner defendants have preferred this petition against the order dated 13.1.2006 passed by the Trial Court discharging the Interim Notice No. 1435 of 2005 in R.A.E. Suit No. 676/1273 of 1998.

4. The respondent plaintiff has filed the suit against

the petitioners for eviction from the suit premises and possession thereof. The original defendant No.1 has died and present petitioners are his legal heirs. The issue in respect of their right to tenancy is also subjudiced in the said suit and additional issue is framed to that effect by the Trial Court. The stage of the suit is that evidence of both parties is over and the matter is fixed for final arguments.

5. At that stage, notices were taken out by defendant No.1a and 1b seeking amendment of the written statement as per the schedule of the amendment. By the said amendment they sought to bring on record the subsequent events namely, the notice issued by MHADA in Times of India news paper on 31.8.2005 and notice also to father of defendant No.1b which was "Warning Notice" dated 5.9.2005 stating that the property which was shown in the plaint as the property, alternatively available for occupation of defendants was declared as dilapidated and in dangerous condition and, therefore, not suitable to reside therein and, therefore, notice for eviction came to be issued. The second point of amendment was to the effect that the present respondent plaintiff had acquired vacant and peaceful possession of residential flat admeasuring 1250 sq.ft. carpet area of the suit

flat is finally acquired by them after litigating that matter upto the Apex Court.

6. The Trial Court Judge, after hearing both parties, came to the conclusion that the amendment application was not tenable in law at the stage of final hearing as the facts sought to be brought on record were already on record and, therefore, notice came to be discharged and application for amendment was rejected.

7. Without further elaboration I must note that findings of both the Courts below are quite relevant having bearing over the issues involved in the suit. So far as the MHADA notice of August 2005 is concerned, in my considered view, it would be required to incorporate in pleadings of the defendant especially when the same property is shown in the plaint para 79 to be the property which is sought to be alternatively available for occupation of the defendant which is now allegedly rendered unsuitable for respondents and in fact notice to vacate the same is issued. So far as the acquisition of another flat by the respondent is concerned, that also amounts to subsequent event having bearing over the issues involved. The learned counsel for the respondent urged that this application was frivolous one and

malafide in the sense that it was preferred only to delay further the pending suit which is at the final stage of arguments.

8. In my considered view, both these points sought to be brought on record by way of amendment are required to be incorporated in pleadings so as to enable the defendant to lead evidence on those points which would have bearing over the issues involved. On the other hand, if the amendment is allowed, there would not be any prejudice to the other side if the time bound programme is fixed by this Court for final disposal of the pending suit.

9. Under the circumstances, I am inclined to accept the plea of the petitioner. Rule is made absolute. The petition is allowed in terms of prayer clause (a).

10. The Trial Court shall allow the defendants to amend the written statement immediately. Thereafter the additional issues, if any, would be raised and both parties would be allowed to lead evidence with regard to the limited points involved by way of said amendment and the Trial Court, under no circumstances, would give opportunity to both sides to bring on record any further

aspects beyond the issues involved by way of amendment in the written statement. All the said process shall be completed within one month from the date of this order and then the Trial Court shall proceed according to the law.

With these directions the petition stands disposed of with no order as to costs.

Parties to act on the authenticated copy of this order.

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